

**EXHIBIT P**

5CESVILAR

1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

5 v.

05 Cr. 621

6 ALBERTO VILAR and GARY TANAKA,

7 Defendants.

8 -----x

9 December 14, 2005  
10 9:45 a.m.

11 Before:

12 HON. KENNETH M. KARAS,

13 District Judge

14 APPEARANCES

15 MICHAEL J. GARCIA

15 United States Attorney for the  
16 Southern District of New York

16 MARC LITT,

17 Assistant United States Attorney

18 SUSAN WOLFE, ESQ.

18 JEFFREY HOFFMAN, ESQ.

19 Attorneys for Defendant Alberto Vilar

20 GLENN COLTON, ESQ.

20 STEVEN KOBRE, ESQ.

21 Attorneys for Defendant Gary Tanaka

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1 positions with Amerindo Panama, UK, and Cayman, that they  
2 participated in a fraudulent scheme to the tune of \$2 million  
3 that involved the oldest clients in which Amerindo UK, U.S. and  
4 Panama were all involved and in which millions of dollars were  
5 going around both to off shore entities and out of "off-shore  
6 accounts" where the Amerindo brokerage accounts that are  
7 affiliated with Amerindo Panama, and given everything laid out  
8 in the warrant including these closely held companies, the  
9 owners, founders, sole shareholders personally benefiting, the  
10 ordinary person at least Mr. Vilar having personal contact with  
11 victims that there's probable cause to believe that this other  
12 off-shore entity is involved, too. That's the probable cause  
13 argument with respect to Cayman.

14 THE COURT: All right. I don't want to get into  
15 arguing the whole motion at this point. I realize I asked the  
16 question -- it did pop into my head -- but why should the  
17 defendants get to ask the questions that in particular  
18 Mr. Kober and I were talking about.

19 MR. LITT: I don't see how they advanced the ball in  
20 getting to the issue that has to be decided. What was told to  
21 the 19 agents or inspectors doesn't tell you what was taken.  
22 It doesn't tell you whether a reasonable agent would have or  
23 inspector would have relied in good faith on a warrant signed  
24 by a judge and as described as by Inspector Feiter as being  
25 consistent with other ones that he had even seen, etc. I don't

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1 see how that advances the issue.

2 THE COURT: Well, in Burke, Judge Mukasey noted that  
3 the affiant was there and participated in the warrant and,  
4 therefore, he was able to infer that the person with the  
5 knowledge of the investigation and understood the contours of  
6 the investigation was able to limit, presumably, the execution  
7 of the warrant, and, in that case, ensure the non-Dali work,  
8 the documents information related to things other than Dali  
9 were not taken.

10 MR. LITT: And calling Inspector Fraterrigo won't  
11 change the evidence that already exists that Inspector  
12 Fraterrigo was there, just as the agent was there in Burke.  
13 There's already evidence in the record she was there. There's  
14 no dispute the fact that she was there. That's no dispute the  
15 fact that she was one of the people answering questions that  
16 people had when they came up. So I don't see how calling  
17 Inspector Fraterrigo --

18 THE COURT: Anything else you want to say?

19 MR. LITT: No.

20 THE COURT: I'm conscious of the hour and the fact  
21 that we've been here all day. What I would like to do is get  
22 your answer tomorrow as to the testimony of the case agent, and  
23 are you serious about having 19 agents and having them testify,  
24 Ms. Wolfe?

25 MS. WOLFE: Well, I would call agents until the point

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1 at which your Honor is satisfied that the general search had  
2 occurred.

3 MR. KOBRE: Only that because we're just relying on  
4 Burke and the Court's recognition of the facts surrounding the  
5 search, including what's in the searcher's head, which is the  
6 affiant as it's laid out, he recognizes they had the affidavit,  
7 we think that the information that your Honor has proffered  
8 would allow us to ask those questions. That's what we're  
9 seeking. So at this point we sort of diverge from Mr. Vilar in  
10 seeking --

11 THE COURT: You're going to join their application?

12 MR. KOBRE: Right.

13 THE COURT: Is there anybody else you want to call?

14 MR. KOBRE: Mr. Litt, but we're not going to do it.  
15 Just kidding. No, there's no others.

16 THE COURT: Now, with respect to the statements, I'm  
17 happy to proceed either by setting an argument. We're out of  
18 time to argue this tonight. I'm not going to keep the court  
19 reporter here. The sun's been down for about an hour or you  
20 can submit something in writing. You know, it's up to you.

21 MR. HOFFMAN: I think writing would be preferable on  
22 both sides.

23 THE COURT: Mr. Litt would prefer argument.

24 MR. LITT: I would prefer argument, your Honor. I  
25 think it would be brief. I don't think there are a lot of

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